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Cases, Regulations and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

CONTINUOUS USE. The parties owned neighboring farmland. When the parties each purchased their property a 70 foot wide hedgerow existed along the property line separating the properties and a fence was hidden inside the hedgerow which marked the boundary. The defendants purchased their property in 1990 and the plaintiffs purchased their property in 2004. The plaintiffs had a survey performed and informed the defendants of the survey when the defendants began work on removing the hedgerow and replacing the fence. The new fence did not follow the boundary line in the survey and was placed up to 49 feet onto the plaintiff's side of the boundary. The defendant claimed title to the disputed property by adverse possession. The plaintiffs presented aerial photographs and testimony of prior owners that showed that the original fence was a straight line between the properties and was enclosed by the hedgerow. The defendant provided only personal testimony as to an earlier repair of the fence as evidence of use of the hedgerow area to support a claim of adverse possession of the entire hedgerow area. The appellate court upheld a jury verdict for the plaintiffs, holding that the defendant had not shown any continuous use of the hedgerow area for more than 10 years, because, during the time since the repair of the fence, the hedgerow had regrown and replaced the original hedgerow. **Wren v. Blakely, 2014 Wash. App. LEXIS 1952 (Wash. Ct. App. 2014)**.

BANKRUPTCY

CHAPTER 12

DISPOSABLE INCOME. In the second year of their Chapter 12 bankruptcy plan, the debtors, husband and wife, sold 396.47 acres of a 458 acre tract of land in order to fund the plan payments for that year. Under a motion filed with the Bankruptcy Court, the sale proceeds were to pay the lienholders and "expenses of sale, legal fees, capital gains taxes due on the sale, and other obligations due under the Plan." The sales price exceeded by more than $100,000 the value established for the entire 458-acre tract at the time the debtors' Chapter 12 plan was approved by the court. After paying the costs of the sale, claims secured by the land, taxes incurred as a result of the sale, and certain other proper expenses, the debtors were left with $35,341.59 and the remaining 64 acres. The unsecured creditors sought payment to them of the net proceeds as disposable income. The debtors argued that the net proceeds were not disposable income and not estate property subject to payment to the creditors. The debtors wanted the net proceeds used to pay off secured loans, with any remaining funds retained by the debtors. The court held that, upon confirmation of the plan, the 458 acres left the bankruptcy estate and revested in the debtors, subject to the claims of creditars as provided in the confirmed plan. The court held that any appreciation in the value of the land, unless specifically provided for in the plan, became the property of the debtors outside of the plan. The court also held that the appreciation, when realized by a sale, was not disposable income because pre-petition assets cannot create disposable income. ***In re* Smith, 2014 Bankr. LEXIS 3335 (Bankr. N.D. Texas 2014)**.

CONTRACTS

DUTY OF LENDER. The plaintiffs owned an interest in a limited liability company which purchased and operated a cattle feedlot. The LLC had obtained loans from the defendant bank to purchase the feedlot and to purchase cattle to be raised in the feedlot. The plaintiffs personally guaranteed the LLC loans. The LLC also obtained a loan for purchase of cattle feed and during that loan negotiation, the number of cattle in the feedlot was discovered to be less than reported by the feedlot manager. The plaintiffs filed suit against the bank for negligent misrepresentation, fraudulent misrepresentation, negligence and breach of good faith and fair dealing. The actions arose out of the plaintiffs' claim that the bank's loan officer had promised to verify the number of cattle in the feedlot on a monthly basis and the failure of the officer to perform that task resulted in the loss of the cattle. The court examined the written loan agreement and found no language establishing a duty by the bank to monitor the number of cattle. In addition, the court found no long standing history of practice between the plaintiffs and bank as to who monitored the cattle inventory over many years; therefore, the actions of the parties did not create any reasonable expectations under the loan agreement. The court held that the bank was not liable for the loss of the cattle nor that any loans were made upon any false representation made by the bank that the plaintiffs reasonably relied upon. **Page v. Farm Credit Services of America, 2014 U.S. Dist. LEXIS 108018 (D. Kan. 2014)**.

FEDERAL FARM PROGRAMS

BOVINE TUBERCULOSIS. The APHIS has issued interim regulations amending the bovine tuberculosis regulations to advance the status of Antrim, Charlevoix, Cheboygan, Crawford, Emmet, Otsego, and Presque Isle Counties in Michigan from modified accredited advanced to accredited-free. **79 Fed. Reg. 53606 (Sept. 10, 2014)**.

DAIRY. The CCC has adopted as final regulations for the Margin Protection Program for Dairy (MPP-Dairy) and the Dairy

Product Donation Program (DPDP) as authorized in subtitle D of the Agricultural Act of 2014 (the 2014 Farm Bill). MPP-Dairy provides dairy producers with risk management coverage that will pay producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain level. MPP-Dairy provides basic catastrophic level coverage for an administrative fee, and greater coverage for a premium in addition to the administrative fee. Amounts of coverage and premiums vary based on producer selections. The final rule specifies the eligibility requirements and payment formulas for MPP-Dairy. Under the related DPDP, which is a complimentary program designed to support producer margins by increasing the price of milk, the USDA will buy dairy products when the margin falls below a certain level, and will distribute those products to individuals in low-income groups through public and private non-profit organizations. The Farm Service Agency will operate both programs using funds of the CCC. The USDA Food and Nutrition Service will assist in the distribution of the dairy products under DPDP. **79 Fed. Reg. 51453 (Aug. 29, 2014)**.

FEDERAL ESTATE AND GIFT TAXATION

NO ITEMS

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayers, husband and wife, purchased approximately 140 acres of land that were improved with a farmhouse and outbuildings and that also consisted of crop land and pasture land. Petitioners rented out the farmland separately from the farmhouse. Since purchasing the land, the taxpayers had numerous local farmers lease the crop land and the pasture land. The taxpayers attempted to rent out the farmhouse but were unsuccessful in finding tenants to rent the house in exchange for cash. Various relatives of the taxpayers lived in the house in exchange for services, such as maintenance and repair, for 24 of the 31 years that the taxpayers owned the house. The taxpayers also used the house to store tools and for overnight stays when they were working on the farm. The taxpayers claimed deductions for expenses related to the house, including automobile, insurance, repair, supplies and utility expenses, most of which were disallowed by the IRS. The taxpayers argued that they rented the house in exchange for services but the court noted that the bartered rent was not included as income on the taxpayers' returns and the taxpayers provided no evidence that the bartered services were valued at fair rental value. In addition, the taxpayers failed to provide sufficient records to substantiate the automobile expenses. The court held that the deductions were properly disallowed because the taxpayers provided insufficient evidence that the house was used for the production of income. **Meinhardt v. Comm'r, T.C. 2014-2 U.S. Tax Cas. (CCH) ¶ 50,430 (8th Cir. 2014), *aff'g*, Memo. 2013-85**.

DEPENDENTS. The taxpayer co-leased an apartment with an unrelated person and moved in with three minor grandchildren. The taxpayer provided all the financial costs for the care of the children but the other parent provided non-monetary care and the co-tenant provided some care, the costs for which were reimbursed by the taxpayer. The taxpayer filed a tax return using the head of household status and claiming the dependency deduction for all three children, with the earned income tax credit and child tax credit. The court held that the children were qualifying children, under I.R.C. § 152(c)(1), because they met the relationship and age tests, the taxpayer provided more than one-half of their support and the children lived with the taxpayer more than one-half of the year. Because the children were qualifying children, the taxpayer could take the dependency deductions and claim the earned income tax credit and child tax credit based on the children as dependents. **Roberts v. Comm'r, T.C. Summary Op. 2014-88**.

DEPRECIATION. The taxpayer was the parent corporation of an affiliated group of corporations. The taxpayer timely filed the consolidated federal income tax return for the taxable year. On the tax returns three of the group claimed the 100-percent additional first year depreciation deduction under I.R.C. § 168(k)(5) for components that were eligible under the limited election provided in Section 3.02(2)(b) of *Rev. Proc. 2011-26, 2011-1 C.B. 664* and placed in service during the taxable year. The taxpayer, however, inadvertently failed to attach the election statement to the consolidated federal income tax return for the taxable year. The IRS granted an extension of time to filed an amended consolidated return with the election statement attached. **Ltr. Rul. 201435001, May 22, 2014**.

FIRST TIME HOMEBUYER CREDIT. In 1989, the taxpayer and former spouse purchased a residence. The home was titled only in the taxpayer's name but the spouse's name was added to the title in 2003. The couple divorced in 2010 and as part of the property settlement, the former spouse transferred the spouse's interest in the house to the taxpayer. On the basis of this transaction, the taxpayer claimed a first time homebuyer credit, arguing that the transfer was eligible for the credit under I.R.C. § 36(c)(6) as a "purchase of a subsequent principal residence." The court disagreed noting that the statute provides that an acquisition does not qualify as a purchase if the basis of the property acquired is determined "in whole or in part by reference to the adjusted basis of . . . [the] property in the hands of the person from whom acquired." Because the former spouse's interest in the residence was transferred incident to a divorce decree, the taxpayer's basis in the spouse's interest was the same as the spouse's basis; therefore, the transfer in the divorce was not a purchase eligible for the credit. **Sullivan v. Comm'r, T.C. Summary Op. 2014-89**.

FOREIGN INCOME. The Department of the Treasury and the IRS have announce that they will amend the regulations under I.R.C. § 1298(f) to provide guidance concerning United States persons that hold stock of a passive foreign investment company within the meaning of I.R.C. § 1297(a) that is marked to market under I.R.C. § 475 or another chapter 1 Code provision other than I.R.C. § 1296. **Notice 2014-51, I.R.B. 2014-40**.

HEALTH INSURANCE. The IRS has published information for taxpayers who get health insurance coverage through a Health Insurance Marketplace and who change their residence. The IRS reminds taxpayer about one more important moving notification to add to the list – the Marketplace. If a taxpayer is receiving advance payments of the premium tax credit, it is particularly important that the taxpayer report changes in circumstances, including moving, to the Marketplace. Reporting the move lets the Marketplace update the information used to determine the taxpayer's eligibility for a Marketplace plan, which may affect the appropriate amount of advance payments of the premium tax credit that the government sends to the health insurer on the taxpayer's behalf. Reporting the changes will help taxpayers avoid having too much or not enough premium assistance paid to reduce their monthly health insurance premiums. Getting too much premium assistance means a taxpayer may owe additional money or get a smaller refund when the taxpayer files the tax return. On the other hand, getting too little could mean missing out on monthly premium assistance for which the taxpayer is eligible. Changes in circumstances that a taxpayer should report to the Marketplace include, but are not limited to: (1) an increase or decrease in income; (2) marriage or divorce; (3) the birth or adoption of a child; (4) starting a job with health insurance; and (5) gaining or losing eligibility for other health care coverage. Many of these changes in circumstances – including moving out of the area served by the current Marketplace plan – qualify taxpayers for a special enrollment period to change or get insurance through the Marketplace. In most cases, if a taxpayer qualifies for the special enrollment period, the taxpayer will have 60 days to enroll following the change in circumstances. More information about special enrollment periods can be found at www.HealthCare.gov. **Health Care Tax Tip 2014-17**.

HEALTH INSURANCE EXCHANGES. On the issue of whether the health insurance premium tax credit under I.R.C. § 36B can be provided to individuals who obtain individual health insurance coverage on the federal exchange, a three-judge panel of the Circuit Court of Appeals for the Fourth Circuit ruled in favor allowing the tax credit. *King v. Burwell, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,367 (4th Cir. 2014), aff'g, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,184 (D. Va. 2014)*. However, a split three-judge panel of the D.C. Circuit Court of Appeals ruled against allowing the tax credit. The D.C. Circuit Court of Appeals has agreed to an *en banc* review of its decision. **Halbig v. Burwell, 2014 U.S. App. LEXIS 17099 (D.C. Cir. 2014), *rehearing en banc granted*, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,366 (D.C. Cir. 2014), *vac'g*, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,138 (D. D.C. 2014)**.

IRA. During 2010 the taxpayer did not earn any wages, salaries, professional fees, or other amounts derived from, or received for, personal service actually rendered. The taxpayer was unemployed for the entire year and received unemployment compensation totaling $24,304. The taxpayer also received taxable interest income during the year totaling $170.55. In 2010 the taxpayer received social security disability benefits during the year totaling $34,346.50 of which $7,554 was paid in 2010 for 2009, and $11,688 was paid in 2010 for other tax years. On the taxpayer's 2010 tax return the taxpayer omitted the social security benefits from gross income and claimed an IRA deduction of $3,000 for contributions made to an IRA. The court noted that the IRA deduction allowed under I.R.C. § 219 is limited by the amount of compensation received by the taxpayer. Under I.R.C. § 219(f)(1) and Treas. Reg. § 1.219-1(c)(1), compensation does not include amounts received as a pension or annuity. Under I.R.C. § 86(f)(3), social security benefits are to be treated as an amount received from a pension or annuity. Therefore, the court held that the IRA deduction was properly disallowed by the IRS because the taxpayer had no compensation in 2010. The court also held that a portion of the social security benefits was included in taxable income under the formula provided in I.R.C. § 86(a)(2). **Halo v. Comm'r, T.C. Summary Op. 2014-92**.

INSURANCE. The taxpayer became disabled while employed and filed for long-term disability payments under a group disability insurance policy provided and paid for by the taxpayer's employer. The insurance premiums paid by the employer were not included in the taxpayer's taxable income. The insurance company refused to provide the disability coverage and the taxpayer had to file a lawsuit to obtain the coverage. The parties settled for a lump sum payment in satisfaction of all claims. The taxpayer listed the settlement payment as income but excluded it from taxable income. The taxpayer argued that (1) the payment was excludible, under I.R.C. § 104(a)(2), as payment for a physical illness, (2) the payment was excludible, under I.R.C. § 104(a)(1), as payment as workers' compensation benefits, and (3) the payment was excluded from gross income under I.R.C. § 104(a)(3) as received from an accident or health insurance for personal injuries or sickness. The court held that the payment was received in compensation for the failure of the insurance company to provide benefits under the insurance policy and not a compensation for causing a physical injury or illness; therefore, I.R.C. § 104(a)(2) did not exclude the payment from taxable income. The court held that the payment was not workers' compensation benefits because the payment was not approved by the state workers' compensation agency; therefore, I.R.C. § 104(a)(1) did not exclude the payment from taxable income. Finally, the court held that, because the insurance premiums were paid by the employer and not included in the taxpayer's taxable income, I.R.C. § 104(a)(3) did not exclude the payment from taxable income. **Ktsanes v. Comm'r, T.C. Summary Op. 2014-85**.

PARTNERSHIPS.

PARTNER'S BASIS. The taxpayer was a partner in a new partnership which needed an infusion of funds from a corporate partner. The corporate partner refused to contribute any additional money unless the taxpayer also contributed assets. The taxpayer contributed promissory notes to the partnership but did not specifically guarantee any partnership debt or unconditionally agree to contribute additional funds if requested. The IRS disallowed deductions for pass-through losses from the partnership because the taxpayer had insufficient basis in the taxpayer's partnership interest. The taxpayer argued that the promissory notes increased the taxpayer's basis in the partnership. The court held that, because the promissory notes had a zero basis in the hands of the taxpayer, the contribution of the notes did not increase the taxpayer's partnership basis. **VisionMonitor Software, LLC v. Comm'r, T.C. Memo. 2014-182**.

PASTORAL INCOME. The taxpayer was an ordained minister of an unincorporated church. The taxpayer formed a corporation sole and had payments made from the church paid to the corporation which were earned by the taxpayer's services as pastor to the church. The taxpayer signed a vow of poverty. The taxpayer did not include the payments from the church in taxable income and the IRS assessed taxes on that unreported income. The taxpayer argued that the vow of poverty made the income non-taxable. The court held that, because the taxpayer had complete use of the income for personal expenses and did not contribute the income back to the church consistent with the vow of poverty, the income was taxable. **Cortes v. Comm'r, T.C. Memo. 2014-181**.

PENSION PLANS. For plans beginning in September 2014 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.20 percent. The 30-year Treasury weighted average is 3.40 percent, and the 90 percent to 105 percent permissible range is 3.06 percent to 3.57 percent. The 24-month average corporate bond segment rates for September 2014, without adjustment by the 25-year average segment rates are: 1.15 for the first segment; 4.06 for the second segment; and 5.15 for the third segment. The 24-month average corporate bond segment rates for September 2014, taking into account the 25-year average segment rates, are: 4.99 for the first segment; 6.32 for the second segment; and 6.99 for the third segment. **Notice 2014-50, I.R.B. 2014-40**.

The IRS has issued guidance on the changes to the funding stabilization rules for single-employer pension plans under the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) that were made by section 2003 of the Highway and Transportation Funding Act of 2014, Pub. L. No. 113-159, which was enacted on August 8, 2014. **Notice 2014-53, I.R.B. 2014-40**.

QUARTERLY INTEREST RATE. The IRS has announced that, for the period October 1, 2014 through December 31, 2014, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 0.5 percent. **Rev. Rul. 2014-23, I.R.B. 2014-40.**

RETURNS. The IRS has published guidance on filing amended tax returns. (1) *When to amend*. Taxpayers should amend their tax return if they need to correct their filing status, the number of dependents claimed, or total income. Taxpayers should also amend their return to claim tax deductions or tax credits that they did not claim when they filed their original return. The instructions for Form 1040X, *Amended U.S. Individual Income Tax Return*, list more reasons to amend a return. (2) *When not to amend*. In some cases, taxpayers do not need to amend a tax return. The IRS usually corrects math errors when processing the original return. If the taxpayer did not include a required form or schedule, the IRS will send the taxpayers a request for the missing item. (3) *Form to use*. Use Form 1040X to amend a federal income tax return that was previously filed. Make sure to check the box at the top of the form that shows which year is being amended. Since a taxpayer cannot e-file an amended return, taxpayers will need to file the Form 1040X on paper and mail it to the IRS. (4) *More than one year*. If a taxpayer files an amended return for more than one year, the taxpayers should use a separate 1040X for each tax year. Mail them in separate envelopes to the IRS. See "Where to File" in the instructions for Form 1040X for the correct address to use. (5) *Form 1040X*. Form 1040X has three columns. Column A shows amounts from the original return. Column B shows the net increase or decrease for the amounts that are changing. Column C shows the corrected amounts. Taxpayers should explain what is changing and the reasons why on the back of the form. (6) *Other forms or schedules*. If the changes involve other tax forms or schedules, make sure to attach them to Form 1040X when filing the form. Failure to do this will cause a delay in processing. (7) *Amending to claim an additional refund*. If the taxpayer is waiting for a refund from the original tax return, do not file an amended return until after the taxpayer receives the refund. Taxpayers may cash the refund check from the original return. Amended returns take up to 12 weeks to process. Taxpayers will receive any additional refund they are owed. (8) *Amending to pay additional tax*. If a taxpayer is filing an amended tax return because the taxpayer owes more tax, the taxpayer should file Form 1040X and pay the tax as soon as possible. This will limit any interest and penalty charges. (9) *When to file*. To claim a refund, taxpayers generally must file Form 1040X within three years from the date they filed their original tax return. Taxpayers can also file Form 1040X within two years from the date they paid the tax, if that date is later than the three-year rule. (10) *Tracking the amended return*. Tapxayers can track the status of their amended tax return three weeks after they file by using the "Where's My Amended Return?" tool available on www.IRS.gov or by phone at 866-464-2050. **IRS Summertime Tax Tip 2014-24**.

SALE OF RESIDENCE. Commerce Clearing House has reported that the following case has been appealed to the Eighth Circuit Court of Appeals. The taxpayer sold the principal residence in 2006 for $1,400,000 with payments stretched over eight-years under an installment contract with the balance due in 2014. The seller had received $505,000 in installment payments at the time of the default and repossession of the property. The income tax basis, which was not contested, was $742,204. The seller had excluded the maximum of $500,000 of gain on the sale under the I.R.C. § 121 exclusion. The seller treated the reacquisition in 2009 as a reacquisition of the property under I.R.C. § 1038 but assumed the § 121 exclusion still applied. The Tax Court held that the taxpayer was required to recognize long-term capital gain on the reacquisition of the property, pursuant to I.R.C. § 1038, including gain previously excluded under I.R.C. § 121. See Harl, "Installment Sale with Section 121 Exclusion Followed by Repossession," 25 *Agric. L. Dig*. 105 (2014). **DeBough v. Comm'r, 142 T.C. No. 17 (2014)**.

TAX RETURN PREPARERS. The IRS has published information about the new voluntary Annual Filing Season Program in question and answer form online. One question addressed is the requirements for eligibility of Registered Tax Return Preparers. The IRS states that anyone who passed the Registered Tax Return Preparer test offered between November 2011 and January 2013 only needs to meet their original 15 hour continuing education requirement each year to obtain an AFSP – Record of Completion. Those who passed the RTRP test and certain other recognized national and state tests are exempt from the six hour federal tax law refresher course with test. Another question addressed is the representation rights of AFSP participants. The IRS stated that Attorneys, CPAs, and enrolled agents will continue to be the only tax professionals with unlimited representation rights, meaning they can represent their clients on any matters including audits, payment/collection issues, and appeals. Successful AFSP participants will have limited representation rights, meaning they can represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including the Taxpayer Advocate Service. PTIN holders without an AFSP – Record of Completion or other professional credential will only be permitted to prepare tax returns. They will not be allowed to represent clients before the IRS. For more information, see **http://www.irs.gov/Tax-Professionals/Annual-Filing-Season-Program**.

TAX SCAMS. The IRS has published information about five things tax scammers often do but the IRS will not do. Any one of these five things is a sign of a scam. The IRS will never: (1) Call a taxpayer about taxes owed without first mailing the taxpayer an official notice. (2) Demand that the taxpayer pay taxes without giving the taxpayer the chance to question or appeal the amount they say is owed. (3) Require the taxpayer to use a certain payment method for your taxes, such as a prepaid debit card. (4) Ask for credit or debit card numbers over the phone. (5) Threaten to bring in local police or other law-enforcement to have the taxpayer arrested for not paying. If a taxpayer gets a phone call from someone claiming to be from the IRS and asking for money, here is what the taxpayer should do: If the taxpayer knows or is uncertain whether the taxpayer owes taxes, the taxpayer should call the IRS at 800-829-1040 to talk about payment options. The taxpayer also may be able to set up a payment plan online at IRS.gov. If the taxpayer knows taxes are not owed, the taxpayer should report the incident to the Tax Inspector Federal for Tax Administration (TIGTA) at 800-366-4484 or at www.tigta.gov. If phone scammers call a taxpayer, the taxpayer can also contact the Federal Trade Commission at www.FTC.gov and use their online "FTC Complaint Assistant" to report the scam. Taxpayers should add "IRS Telephone Scam" to the comments of the complaint. Remember, the IRS currently does not use unsolicited email, text messages or any social media to discuss personal tax issues. For more information on reporting tax scams, go to www.irs.gov and type "scam" in the search box. **IRS Special Edition Tax Tip 2014-18**.

SECURED TRANSACTIONS

LEASE OR SECURITY INTEREST. The debtor, a dairy farmer, had granted a bank a security interest in all dairy cows owned and acquired to secure a loan. In order to increase the number of cows in the dairy herd, the debtor later entered into several 50-month cow "leases" under which the lessor retained ownership of cows purchased by the lessor and milked by the debtor. The debtor and bank argued that the leases were actually secured transactions thereby giving the bank a prior security interest in the "leased" cows. The trial court looked at several aspects of the "leases" to determine whether the leases were actually secured transactions under Ken. Stat. § 355.1-203(2). First, the court found that the term of the leases exceeded the economic life of the cows. Second the leases were not terminable by the debtor. Finally, the debtor had most of the indicia of ownership, including the requirement that the debtor replace all culled cows at the debtor's expense; however, in practice, the debtor was not required to pay the lessor the proceeds of the sale of any culled cow and often did not turn over the proceeds to the lessor. Thus, the court held that the leases were *per se* security interests and the bank's prior perfected lien on the debtor's cows had priority in the cows. On appeal, the appellate court reversed, holding that the economic life test was to be applied to the entire herd and not the individual cows. Because the leases provided for replacement cows, the 50 month lease would not extend past the economic viability of the herd. In addition, the appellate court held that the debtor did not obtain any equity interest in the leased cows nor could the debtor prevent repossession of the cows at the end of the lease. Therefore, the appellate court held that the leases were not security interests and the bank did not have a priority security interest in the leased cows. ***In re* Purdy, 2014 U.S. App. LEXIS 15586 (6th Cir. 2014), *rev'g and rem'g*, 2013 Bankr. LEXIS 772 (Bankr. W.D. Ken. 2013)**.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

On the back cover, we list the agricultural tax seminars coming up in the late summer of 2014. Here are the cities and dates for the other seminars this fall:

October 13-14, 2014 - Ramada Hotel, Hutchinson, KS

November 24-25, 2014 - Adams State Univ., Alamosa, CO

Each seminar will be structured the same as the seminars listed on the back cover of this issue. More information will be posted on www.agrilawpress.com and in future issues of the *Digest*.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only (see registration form for use restrictions on PDF files).

September 18-19, 2014, Ramkota Hotel, Sioux Falls, SD ph. 605-336-0650
October 2-3, 2014, Holiday Inn, Rock Island, IL, ph. 309-794-1212
October 6-7, 2014 -Best Western Hotel, Clear Lake, IA, ph. 641-357-5253

More locations and dates listed on previous page.

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special Use Valuation
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the regulations
- Federal estate tax liens
- Undervaluations of property

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust
The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships
Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

Status of the Corporation as a Farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sale
- Stock redemption

Social Security
- In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

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